

**BEFORE THE  
U.S. DEPARTMENT OF ENERGY  
Washington, D.C. 20585**

In the Matter of: )  
 )  
 ) Case Number: 2014-SE-16014  
**National Comfort Products** )  
(central air conditioners and heat pumps) )  
 )

**NOTICE OF PROPOSED CIVIL PENALTY**

Date issued: July 10, 2014

Number of alleged violations: 6,518 (8 basic models, 6,518 total days)

Maximum possible assessment: \$ 1,303,600

Proposed civil penalty: \$ 325,900

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges that National Comfort Products (“NCP”) has violated certain provisions of the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* (“the Act”), and 10 C.F.R. § 429.12.

Specifically, DOE alleges:

1. NCP has manufactured<sup>1</sup> a variety of space constrained central air conditioners and central air conditioning heat pumps including basic models DSHP-018-1019, NCPH-018-1019, NCPC-018-4010/1, NCPB-030-2010/D, NCPB-030-4010, NCPC-030-1010/1, NCPC-030-3010 and NCPC-030-4010/1 (together, the “subject basic models”).
2. On October 28, 2011, NCP agreed to pay \$8,000 after failing to submit certification reports for central air conditioners. As part of that agreement, NCP also agreed to certify all basic models of all covered products that it distributed in the U.S.
3. NCP submitted a certification report on December 22, 2011, listing basic model NCPC-030-4010/1 as discontinued, and continued to distribute this basic model in commerce in the U.S. for 901 days until NCP submitted a certification for this basic model on June 10, 2014.
4. NCP submitted a certification report on January 6, 2012, listing basic models NCPB-030-2010/D, NCPB-030-4010, NCPC-030-1010/1 and NCPC-030-3010 as discontinued, and

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<sup>1</sup> “Manufacture” means to manufacture, produce, assemble, or import. 42 U.S.C. § 6291(10).

continued to distribute these basic models in commerce in the U.S. for 886 days until NCP submitted a certification for these basic models on June 10, 2014.

5. NCP submitted a certification report on April 12, 2012, listing basic model NCPC-018-4010/1 as discontinued, and continued to distribute this basic model in commerce in the U.S. for 789 days until NCP submitted a certification for this basic model on June 10, 2014.
6. NCP submitted a certification report on September 6, 2012, listing basic models DSHP-018-1019 and NCPH-018-1019 as discontinued, and continued to distribute these basic models in commerce in the U.S. for 642 days until NCP submitted a certification for these basic models on June 10, 2014.
7. Basic models DSHP-018-1019, NCPH-018-1019, NCPC-018-4010/1, NCPB-030-2010/D, NCPB-030-4010, NCPC-030-1010/1, NCPC-030-3010 and NCPC-030-4010/1 are "covered products." See 42 U.S.C. § 6292(a)(3); 10 C.F.R. § 430.2.
8. NCP distributed the subject basic models in commerce in the U.S. for a total of 6,518 days without first submitting a valid certification of compliance as required by 10 C.F.R. §§ 429.12 and 429.16.

Failure to properly certify covered products as required by 10 C.F.R. Part 429 is a prohibited act pursuant to 10 C.F.R. § 429.102(a)(1) and subject to civil penalty as described in 10 C.F.R. § 429.120.

**The following information is provided in question and answer format to help explain NCP's legal obligations and options.**

*What do I do now?*

DOE is offering a settlement of **\$16,000** if you submit the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice. As part of that settlement, you must pay the fine within thirty (30) calendar days of the date of issuance of an order adopting the Agreement ("Adopting Order") and within sixty (60) calendar days of the date of the Adopting Order properly certify all models that you manufacture and distribute in commerce in the U.S. If you do not submit the required certification documents within sixty (60) calendar days of the date of the Adopting Order, you will be subject to the maximum penalty of \$200 per day per basic model for every day you do not certify each basic model.

You may settle the case for **\$32,000** if you submit the signed compromise agreement between 31 and 60 calendar days after the date of this notice. As part of that settlement, you must pay the fine within thirty (30) calendar days of the date of the Adopting Order and within sixty (60) calendar days of the date of the Adopting Order properly certify all models that you manufacture and distribute in commerce in the United States. If you do not submit the required certification documents within 60 calendar days of the date of the Adopting Order, you will be subject to the maximum penalty of \$200 per day per basic model for every day you do not certify each basic model.

If you do not choose to settle the case, DOE may seek the **maximum penalty** (\$1,303,500) authorized by law. You have other options as described below.

*What are my other options?*

If you do **not** agree to DOE's settlement offer, you must select Option 1 or Option 2, below, within thirty (30) calendar days.

Option 1: You may elect to have DOE issue an order assessing a civil penalty. Failure to pay the assessed penalty within sixty (60) calendar days of the date of the order assessing such penalty will result in referral of the case to a U.S. District Court for an order affirming the assessment of the civil penalty. The District Court has the authority to review the law and the facts *de novo*.

Option 2: You may elect to have DOE refer this matter to an Administrative Law Judge ("ALJ") for an agency hearing on the record. Upon a finding of violation by the ALJ, DOE will issue an order assessing a civil penalty. This order may be appealed to the appropriate U.S. Court of Appeals.

*When must I respond?*

You must submit the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice to pay the **lowest fine (\$16,000)**. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE of your selection of Option 1 within thirty (30) calendar days of the date of this Notice. Otherwise, if you do not settle the case, DOE will refer the case to an ALJ as described in Option 2.

*How should I submit my response?*

To assure timely receipt, DOE strongly encourages you to submit your response by e-mail. DOE accepts scanned images of signed documents (such as PDFs). You may respond by any of the following methods:

By email to: david.case@hq.doe.gov  
By fax to: (202) 586-3274  
By private carrier to: David Case  
Trial Attorney (GC-32)  
U.S. Department of Energy  
1000 Independence Ave., SW  
Washington, DC 20585

*What happens if I fail to respond?*

If you fail to respond within thirty (30) calendar days of the date of this Notice, or by the time of any extension granted by DOE, DOE will refer the case to an ALJ for a full administrative hearing (Option 2, above).

